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Marston Mead.

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H.R. Rep. No. 144, 23rd Cong., 1st Sess. (1834)

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MARSTON MEAD.

JANUARY 7, 1834.

Read, and laid upon the table.

Mr. EVERETT, of Vermont, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to which was referred the claim of Marston Mead, report:

That the evidence tends to prove that, in the spring of the year 1816, the claimant, with his family, arrived, at Fort Deposit (on the Tennessee river, within the limits of the Cherokee nation,) on his way to Fort Jackson, in the vicinity of which he intended to make a settlement. Concluding to leave his family at Fort Deposit for the summer, he built houses for their temporary accommodation. On his way to Fort Jackson, he was informed of the President's proclamation, forbidding settlements on the lands acquired from the Creeks, by the treaty of Fort Jackson, and in consequence of which he returned to Fort Deposit. He was then informed by the commissioners appointed to run the line between the Creeks and Cherokees, that Fort Deposit and the adjoining country would be found to belong to the United States. Some time in the summer he was appointed a deputy under Polk & Williams, to supply the Government troops then at Fort Deposit, and continued to supply them as long as they remained there. On the 3d of August, 1816, for the purpose of enabling him to execute the duties of his appointment, he obtained a pass from the Indian agent for the Cherokee nation; (a copy of which is annexed.) In the course of the summer he cleared fifty or sixty acres. In the fall, being informed that his settlement was within the Cherokee nation, he leased it from Richard Brown, a principal chief of that part of the Cherokee nation. In March or April, 1817, Captain Houston, with a company of United States troops, forcibly removed him from the Cherokee nation, burnt his houses, and wantonly destroyed and exposed to destruction, his personal property, and subjected him to great expense in sustaining his family. It does not appear at what time the troops supplied by the claimant were removed from Fort Deposit. From the evidence, however, the committee infer that he was not acting as deputy contractor at the time of his being removed.

The view which the committee have taken, has rendered it unnecessary to estimate the damage the claimant has sustained, in relation to which, and to some other part of the case, the evidence is vague and unsatisfactory. They are of opinion that, assuming the above statement as proved,

the claimant is not entitled to relief. His settlement at Fort Deposit was, according to his own representation, in character of an intrusion on the public lands. The unauthorized declaration of the commissioners conferred no right on the claimant, nor imposed any obligation on the Government. The appointment of deputy contractor, nor the pass from the Indian agent, could give him no right to remain in the nation after his duties ceased; nor any right at any time to become a settler on the Cherokee lands. When his settlement was ascertained to be within the Cherokee nation, he was legally subject to be removed under the provisions of the intercourse act of 1802. A lease from an Indian chief, nor even from the Cherokee nation, could give him a right to remain as against the positive provisions of that act. His settlement, then, being unlawful, he had no property in his improvements that can be recognised, nor any claim for their destruction, or for any damage necessarily occasioned by his removal. In relation to the alleged wanton destruction of his personal property, the presumption in all cases is, that it was not done by the order of the Government; and to lay a foundation for a claim against it, the party should first establish his right, by a judgment at law, against the officer, and even then the Government is not bound to indemnify the officer, unless the act complained of was done under the express order of a superior officer.

Copy of a pass to Marston Mead.

Marston Mead having public business frequently requiring his passing and repassing through the Cherokee nation, the right of doing so is hereby accorded to him; and the Cherokees will at all times treat him with that respect due to an American gentleman on public business, and to his family now residing in said nation. Given under my hand, at the office of the Cherokee agency, the 3d day of August, 1816.

RETURN J. MEIGS.